



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

5 Post Office Square, Suite 100

Boston, MA 02109-3912

July 28, 2016

Grover J. Fugate
Executive Director
Coastal Resources Management Council
State of Rhode Island
Stedman Government Center
4808 Tower Hill Road
Wakefield, Rhode Island 02879

Re: EPA Determination that its Proposed Designation of a Dredged Material Disposal Site in the Eastern Region of Long Island Sound Will Either Have No Effect On, Or Will Be Consistent with, Rhode Island's Coastal Zone Management Program

Dear Mr. Fugate:

The New England Office of the United States Environmental Protection Agency (EPA) is proposing to designate an open-water dredged material disposal site for the eastern region of Long Island Sound pursuant to Sections 102(c) and 106(f) of the Marine Protection, Research and Sanctuaries Act (MPRSA). 33 U.S.C. §§ 1412(c) and 1416(f). *See also* 40 C.F.R. § 228.4(e). On April 27, 2016, EPA published a Proposed Rule notifying the public of this proposed action and seeking public review and comment. 81 Fed. Reg. 24748 - 244767 (April 27, 2016) (EPA's April 2016 Proposed Rule). EPA also simultaneously published for public review and comment a Draft Supplemental Environmental Impact Statement (DSEIS) that evaluated the proposed action and various possible alternatives to it (EPA's April 2016 DSEIS).

EPA has determined that its proposed action either (a) would not affect any coastal use or resource of Rhode Island's coastal zone (*i.e.*, "a negative determination" under 15 C.F.R. § 930.35), or, alternatively, (b) would be fully consistent with the enforceable policies of Rhode Island's Coastal Management Program ("RI CMP") (*i.e.*, a "consistency determination" under 15 C.F.R. § 930.36). Therefore, EPA is submitting this negative determination or, in the alternative, consistency determination to the Coastal Resources Management Council of the State of Rhode Island ("RI CRMC") pursuant to Section 307(c)(1)(C) of the Federal Coastal Zone Management Act ("CZMA") and applicable federal regulations. 16 U.S.C. § 1456(c)(1)(C); 15 C.F.R. §§ 930.35 and 930.36.

The Proposed Site Designation and Primary Alternatives under Consideration

Specifically, EPA is proposing to designate a site offshore of New London, CT. The site is referred to as the “Eastern Long Island Sound Dredged Material Disposal Site” (ELDS). While identifying designation of the ELDS as its preferred alternative, EPA also indicated that two other alternatives, the Niantic Bay Disposal Site (NBDS) and the Cornfield Shoals Disposal Site (CSDS), or portions thereof, could also potentially be designated in addition to, or instead of, the ELDS. EPA invited public comment on the option of designating one or both of these sites. EPA also has proposed that the same site use restrictions that govern use of the Central Long Island Sound (CLDS) and Western Long Island Sound (WLDS) dredged material disposal sites would also be applied to the site or sites designated in the eastern region of the Sound. *See* 81 Fed. Reg. 44220 (July 7, 2016) (Final Rule) (amended site use restrictions for the CLDS and WLDS).

The Zone of Siting Feasibility (ZSF) – i.e., the area within which EPA looked for possible dredged material disposal site options to serve the eastern region of Long Island Sound, *see* 81 Fed. Reg. 24762 – extends in this case from Connecticut and New York waters in the eastern region of Long Island Sound into Rhode Island waters generally north and west of Block Island. *See* 81 Fed. Reg. 24762 (the ZSF has “a southern boundary from Montauk Point to the southern tip of Block Island, and an eastern boundary from the northern tip of Block Island due north to the Rhode Island shoreline.”). *See also* EPA’s April 2016 DSEIS, Figs. ES-2 and 3-1. That said, all three sites now being considered by EPA – the ELDS, NBDS and CSDS – are in Connecticut waters, many miles from the Rhode Island border.¹

The Proposed Site Designation (or Designations) Either Would Not Affect Rhode Island Coastal Zone Resources or Uses, or Would Affect Them in an Insignificant Way and EPA’s Proposed Action Would Be Fully Consistent with Rhode Island’s CMP

Designating the ELDS (or the NBDS or CSDS) would have no *direct* effects on any resource or use of Rhode Island’s (or any other state’s) coastal zone. This is because EPA designation of a dredged material disposal site does not actually authorize the placement of dredged material at the site. *See* 15 C.F.R. §930.11(g) (“direct effects ... result from the activity and occur at the same time and place as the activity ...”). Designation only makes the site *potentially* available to receive dredged material. No material may be placed at the site unless such placement is first specifically authorized by the United States Army Corps of Engineers (USACE). Such authorization, in turn, cannot be granted until the material has been assessed and found to satisfy the strict sediment quality criteria of the MPRSA regulations, and it has been determined that no practicable alternative to open water disposal is available that would have less adverse environmental effects. *See* 40 C.F.R. §§ 227.1(b), 227.5, 227.6, 227.16(b).

Thus, any coastal zone effects of a dredged material disposal site designation would be *indirect* effects. The CZMA regulations of the National Oceanic and Atmospheric Administration (NOAA) explain that “indirect (cumulative and secondary) effects ... [are

¹ EPA has provided CZMA consistency determinations to both Connecticut and New York.

effects that] result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.” 15 C.F.R. § 930.11(g). Designation of a disposal site could potentially have indirect effects (a) at the disposal site, (b) in other areas affected by placement of material at the disposal site, (c) at the sites where dredging would occur, and/or (d) along transit routes from dredging sites to the disposal site.

Because it is “reasonably foreseeable” that once a site has been designated, later federal actions will approve placement of at least some dredged sediments at the site,² designation of the ELDS (and/or the NBDS or CSDS) could result in indirect effects *at the disposal sites or any other area affected by the placement of material at the disposal sites*. Placing material at the site will have some type of environmental effect as material travels through the water column and lands on the seafloor. While EPA has concluded that any such effects would be insignificant, the key point for purposes of this CZMA consistency determination is that there would be no such effects in Rhode Island’s coastal zone. The site alternatives are all located in Connecticut waters, miles from Rhode Island’s coastal zone. Any dredged material placed at one of the disposal sites would travel rapidly to the seafloor and would not disperse horizontally through the water column and away from the site.³ See 81 Fed. Reg. 24754, 24758. Data also indicate that placing dredged material at one of the disposal sites would not adversely affect water quality other than temporarily raising water column turbidity in the area of the disposal site during initial mixing.

Furthermore, material can only be authorized for placement at a designated site if it is first tested and found to satisfy the MPRSA’s strict sediment quality criteria in 40 C.F.R. Part 227, Subpart B.⁴ These criteria prohibit, among other things, the placement of toxic or bioaccumulative material at a designated site. See 40 C.F.R. §§ 227.3, 227.5 and 227.6. While placing the material at a site would affect the seafloor and smother some benthic organisms, research shows that areas receiving dredged material are quickly recolonized by resident benthic organisms. As discussed in the USACE’s PEIS in support of the DMMP, which cites Germano et al, 2011, “although short-term impacts and long-term changes in habitat due to sediment type and elevation of the seafloor have occurred [at the disposal sites], there is no evidence of long-term effects on benthic processes or habitat conditions.” Another reason that the environmental effects would not be significant is that none of the disposal site alternatives encompass natural resource areas of particularly heightened sensitivity. See 81 Fed. Reg. 24754 – 24755. Moreover, placement of dredged material at the sites would not have significant adverse effects on

² Such future disposal is reasonably foreseeable in light of the DMMP’s projections that alternatives to open-water disposal cannot accommodate all the dredged material that will need to be managed over the next 30 years.

³ It should be noted that the CSDS and part of the NBDS are considered to be dispersive sites. This means that material placed at these sites tends to be dispersed from the sites by bottom currents. The prevailing bottom currents at the CSDS and the dispersive portion of the NBDS are to the west, away from Rhode Island’s coastal zone.

⁴ In addition, material cannot be authorized for placement at a designated site unless there are no practicable alternative management methods available that would have less adverse environmental effects.

aquatic organisms transiting the sites because of the restrictions on the type of material that could be placed there and the limited exposures that would occur. Any effects of dredged material disposal would be further limited by the fact that placement of material at the sites could only occur during the limited months when dredging is allowed (typically only from October to April). *See* 81 Fed. Reg. 24754, 24756 (discussing “environmental windows” or “time-of-year restrictions” for dredging). Thus, no effects on Rhode Island’s coastal zone would occur.

It can also be argued that a site designation might result in indirect effects *at locations where dredging will occur*. This argument posits that by providing a way for dredged material to be managed, a disposal site designation enables dredging to take place and, therefore, causes indirect effects at dredging sites. After considering this argument, however, EPA concludes that effects at dredging sites would neither be the result of the proposed EPA site designation(s) nor be significant.

Any effects at dredging sites are not *caused* by site designations. The need for dredging exists regardless of whether a disposal site is designated. Moreover, disposal site designations do not authorize dredging activities, which are subject to separate regulation under other legal authorities. In addition, even without designation of the ELDS (or the NBDS or CSDS), dredging would still occur because the dredged material could potentially be managed in ways other than placement at a designated site in the eastern region of Long Island Sound. (Of course, this would depend on the quality and quantity of dredged material at issue and the availability of alternative management methods.) For example, with regard to dredging sites in Rhode Island, suitable dredged material could still potentially be placed at open-water disposal sites designated by EPA *outside* of the eastern Sound, such as the Rhode Island Dredged Material Disposal Site (RIDS), or at other sites *selected* by the USACE. *See* 33 U.S.C. § 1413(b). More specifically, there are two Rhode Island dredging centers (Block Island and South-Central/Southeast Washington County) located within the ZSF, but both are closer to the Rhode Island Sound Dredged Material Disposal Site (RISDS), which is located in waters offshore of Rhode Island, than to the sites EPA is considering in the eastern region of Long Island Sound. As a result, dredged material from Rhode Island’s coastal zone will either be sent to the RISDS or, if the dredged material is suitable sand, it will be used for beach nourishment or other beneficial uses in Rhode Island’s coastal zone. 81 Fed. Reg. 24750. *See also* EPA’s April 2016 Proposed Rule, 81 Fed. Reg. 24748 - 24752; EPA’s April 2016 DSEIS, §§ 3.4.2.3 and 3.4.2.5. Therefore, the proposed site designation(s) in this case would not cause dredging effects in Rhode Island waters.

Furthermore, EPA expects that any adverse dredging effects would be insignificant because dredging is carefully regulated. Dredging proposals are subject to federal, state and possibly local regulatory review, which should prevent adverse dredging effects. Moreover, dredging in Rhode Island waters would be expected to benefit public coastal uses by improving navigational safety and facilitating marine commerce and recreation.

Finally, designating the ELDS (or the NBDS or CSDS) could, in theory, also indirectly affect Rhode Island’s coastal zone as a result of barges travelling from dredging locations

in Rhode Island to the disposal site (or sites). No such effects would occur within Rhode Island's coastal zone, however, because, as stated above, material dredged from Rhode Island will not be barged to any of the three site alternatives.⁵ Indeed, if no disposal site is designated in the eastern region of Long Island Sound, dredged material from New York and Connecticut might need to be hauled a long distance to the RISDS. Thus, transport-related effects are more of a risk if none of the proposed site alternatives is designated.

In addition, since designation of the ELDS (or the NBDS or CSDS) would reduce the likelihood that dredging proponents in eastern Long Island Sound would need to use the previously designated RISDS, it would also, in effect, preserve capacity at the RISDS for potential use by dredging projects in Rhode Island and southeastern Massachusetts, as originally planned when the site was designated.

Thus, designating the ELDS (and/or the NBDS and/or the CSDS) would have no effect on Rhode Island's coastal zone. If such designation did have any effects on Rhode Island's coastal zone, EPA's proposed action would be fully consistent with the RI CMP.

Prior Consultation with RI CRMC

On March 11, 2016, EPA Region I sent your office a letter indicating the Region's intent to review its possible designation of a dredged material disposal site in the eastern region of Long Island Sound to determine its consistency with the RI CMP and seeking guidance regarding which of the enforceable policies of the RI CMP should be considered. In response to EPA's letter, on March 22, 2016, Jeff Willis of your office sent an email to Jean Brochi of EPA to provide information.

Conclusion

EPA Region 1 has completed its evaluation and, as stated above, has determined that its proposed action, as well as the primary alternatives under consideration, would be consistent to the maximum extent practicable with the enforceable policies of the Rhode Island CMP. The Region's determination is supported by the above-cited Federal Register notice and other materials referenced in the consistency determination.

The waters of Long Island Sound are a precious natural resource that provide immeasurable benefits to the people of our Nation, including residents of the States of Connecticut, New York and Rhode Island. These waters also provide invaluable habitat for aquatic life, a wonderful aesthetic and recreational resource, and a crucial engine for the region's economy. Maintaining their navigability is also important to our national security planning. All of these purposes and functions must be served in our collective

⁵ In addition, EPA does not consider any such barge trip effects to be significant. Conditions are in place that will prevent significant adverse effects. Barge and navigation technology ensure that sediments are placed only at the intended disposal sites. The regulations also preclude disposal trips during threatening sea conditions. See 81 Fed. Reg. 24757, 24760; 40 C.F.R. § 228.15(b)(4)(vi)(I).

stewardship of Long Island Sound. As the RI CMP recognizes, dredging is needed at times to ensure safe navigation and adequate mooring space for recreational, commercial and military vessels. *See* RI CMP, Section 300.9. At the same time, it is critical that dredging and dredged material management be conducted in an environmentally sound manner. EPA Region 1 believes that its proposed action correctly balances this multitude of interests.

In developing this proposal, EPA has taken into account the input of the federal and state agencies and members of the interested public. We look forward to receiving and considering public comments on the Proposed Rule and the DSEIS. When considering the proposed action, it is again important to remember that EPA designation of a disposal site does not authorize either any dredging or the placement of any particular dredged material at the designated disposal site. It just makes the designated site available as a potential management option for use in appropriate circumstances. Any proposal to place dredged material at a site in the waters of Long Island Sound will be subject to a separate case-specific permitting review. Placement at a disposal site can only be authorized if (a) the sediments are analyzed and found suitable for marine disposal after physical, chemical and biological testing, and (b) there are no practicable alternatives to such marine disposal.

EPA Region 1 requests that RI CRMC provide a written concurrence with the attached CZMA consistency determination within 60 days of receipt of this letter.

If you have any questions regarding this letter, your staff may call Mel Cote, chief of the Surface Water Branch at (617) 918-1553 and/or your legal counsel may call Senior Assistant Regional Counsel Mark Stein at (617) 918-1077. Thank you for your continued cooperation in this important effort.

Sincerely,



Kenneth Moraff, Director
Office of Ecosystem Protection

cc (by email):

David Kaiser, NOAA

Mark Habel, USACE

Kathleen Moser, NYDEC

Jeffrey Zappieri, NYDOS

Brian Thompson, CT DEEP